

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**THIRD APPELLATE DISTRICT**

**(Butte)**

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THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
CATHY DAWN GARCIA,  
  
Defendant and Appellant.

C043590  
  
(Super. Ct. No. CM015310)

Following an administrative hearing conducted by the Department of Social Services (DSS) to determine whether defendant Cathy Dawn Garcia's receipt of \$5,839 in welfare benefits to which she was not entitled was "the result of administrative errors or her failure to report [her sons'] absence from her home" and whether she properly claimed her sons as members of her household during the relevant period, the administrative law judge concluded the benefit overpayment was "the result of administrative errors of omission committed by the county welfare department."

While the administrative proceeding was pending, a criminal complaint was filed, alleging defendant committed welfare fraud

and perjury to obtain \$5,839 in benefits to which she was not entitled.

After the administrative decision was rendered, defendant moved to dismiss the criminal charges on the ground collateral estoppel bars the prosecution from relitigating in the criminal proceeding issues that were previously resolved in the administrative proceeding.

Her motion to dismiss was denied and defendant was thereafter convicted of welfare fraud (Welf. & Inst. Code, § 10980, subd. (c)(2)) and perjury (Pen. Code, § 118) in connection with her receipt of the benefits.

On appeal, defendant contends the trial court erred in failing to follow *People v. Sims* (1982) 32 Cal.3d 468 (*Sims*), which held that collateral estoppel bars the state from prosecuting a person for welfare fraud who has been exonerated in administrative proceedings. We agree and shall reverse the judgment.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

In August 2000, the Butte County Department of Social Welfare notified defendant that she had received \$5,839 in benefits between October 1998 and June 2000 to which she was not entitled: \$3,669 in cash aid and \$2,170 in food stamps. Initially, those notices explained that "the overpayment was caused by the County," or the "County Welfare Department made a mistake." Later, the county issued new notices, alleging that

the overpayment of cash aid and overissuance of food stamps were caused instead by defendant's failure to report material changes in her household.

Following a hearing before an administrative law judge in May 2001, at which the parties were represented and testimony was taken,<sup>1</sup> DSS issued its decision. According to the written decision, at issue were the following questions: "1. Whether the boys were members of the assistance unit and household during the periods in question; and 2. Whether the overissuance and overpayment were the result of administrative errors or [defendant's] failure to report the boys' absence from her home." Evidence considered by the administrative law judge included that the county case worker determined that defendant remained eligible to receive benefits for the boys after she reported in September 1998 that her two sons were living with their father "'half of the time now,'" and evidence the boys lived weekdays with their father during the school year. Defendant's ex-husband testified he had primary responsibility for the boys' care since well before 1997, and their longest stay with defendant was four weeks in the summer of 1999.

Noting that "[t]here are three types of overissuance claims: (1) inadvertent household error claims; (2) administrative error claims; and (3) intentional program

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<sup>1</sup> The transcript of the administrative law hearing is not in the record.

violation claims," the administrative law judge concluded: "The overpayment and overissuance are the result of administrative errors of omission committed by the county welfare department. The county is obliged to conduct periodic reviews and investigations as needed when information indicates the circumstances of eligibility may have changed. In this case, there were no periodic redeterminations as required. Furthermore, the report that the children were with their father half of the time needed prompt verification because it was inconsistent with [defendant's] prior reports and the written calendar agreement of the District Attorney's Family Support Division," which indicated that defendant would have primary care and control responsibility during the summer months only. The administrative law judge's order again states "all the overpayments and overissuances are determined to have been caused by administrative errors" and the decision confirmed defendant's obligation to repay the excess benefits she had received.

While the administrative action to recover \$5,839 in welfare benefits was pending, the district attorney filed this action, alleging defendant fraudulently received welfare benefits of \$5,839 (Welf. & Inst. Code, § 10980, subd. (c)(2) -- count 1) and committed perjury by false application for aid when she "affirmatively omitted that James [F.] and Jordan [F.] had moved out of the defendant's home" (Pen. Code, § 118 -- count 2).

After the administrative decision was issued, defendant moved to dismiss this action, on the ground the doctrine of collateral estoppel bars the district attorney from proceeding on criminal charges because an administrative law judgment determined the overpayment and overissuance "were the result of administrative errors . . . , and not the result of any intentional misrepresentation" by defendant.

The trial court denied her motion and, following a court trial, defendant was convicted on both counts.

#### **DISCUSSION**

On appeal, defendant renews her argument that collateral estoppel bars the state from prosecuting her for welfare fraud after DSS determined her benefits overpayments were caused by administrative errors.

Collateral estoppel, or issue preclusion, precludes relitigation of issues argued and decided in prior proceedings. (*Sims, supra*, 32 Cal.3d at p. 477; *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341 (*Lucido*).) The threshold requirements for application of this doctrine are: (1) the issue in the subsequent proceeding is identical to that decided in the former proceeding; (2) the issue was actually litigated in the former proceeding; (3) the issue was necessarily decided in the former proceeding; (4) the decision in the former proceeding is final and on the merits; and (5) issue preclusion is sought against a person who was a party or in privity with a party to the former proceeding. (*Sims, supra* at p. 484; *Lucido, supra* at p. 341;

*Castillo v. City of Los Angeles* (2001) 92 Cal.App.4th 477, 481 (*Castillo*.) The party asserting collateral estoppel bears the burden of establishing these requirements. (*Lucido, supra*, at p. 341.)

If the threshold requirements are met, the propriety of applying collateral estoppel depends upon whether its application will further the public policies of "preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation." (*Lucido, supra*, 51 Cal.3d at p. 343; *Castillo, supra*, 92 Cal.App.4th at p. 481.)

"Issue preclusion is not limited to barring relitigation of court findings. It also 'bars the relitigating of issues which were previously resolved in an administrative hearing by an agency acting in a judicial capacity.' [Citation.]" (*Castillo, supra*, 92 Cal.App.4th at p. 481; *Sims, supra*, 32 Cal.3d at pp. 477-481.)

As she did in the trial court, defendant relies here chiefly upon the California Supreme Court opinion in *Sims, supra*, 32 Cal.3d 468, in which the court held that collateral estoppel bars the criminal prosecution of a welfare recipient for welfare fraud after administrative proceedings conducted by DSS failed to find fraud by the recipient. (*Id.* at pp. 474, 488-489.)

The facts of *Sims* are startlingly similar to those here. In *Sims*, the welfare recipient received administrative notice

claiming she failed to report the composition of her household while receiving aid; before the administrative hearing requested by the recipient occurred, criminal charges "based on the same allegations of fraud that were the subject of the County's 'Notice of Action'" were brought against her. (*Sims, supra*, 32 Cal.3d at p. 473.) While the criminal charges were pending, DSS conducted a hearing and determined that "the County had failed to meet its burden of proving that respondent had fraudulently obtained welfare benefits" (*id.* at p. 474); the county did not seek judicial review of the decision.

The state Supreme Court in *Sims* found that all technical requirements and policy reasons for applying collateral estoppel had been satisfied, despite procedural differences between the two proceedings and notwithstanding any right to a jury trial the prosecution might possess. (*Sims, supra*, 32 Cal.3d at pp. 477, 483-484, fn. 13, 490; see also *Lucido, supra*, 51 Cal.3d at p. 344.) It reasoned that the welfare fraud issue was properly raised by respondent's request for a fair hearing in the administrative action and identical to that raised in the criminal matter and, when the administrative hearing officer ruled in the recipient's favor, he necessarily resolved the same issue posed in the criminal case. (*Sims, supra*, 32 Cal.3d at pp. 484-485.) The court further held that the finality requirement is satisfied when the time for seeking judicial review of the administrative decision through a petition for writ of mandate has expired without such review being sought

(*id.* at p. 486), and that the county and district attorney are in privity with one another because “[b]oth entities are county agencies that represented the interests of the State of California at the respective proceedings.” (*Id.* at p. 487.)

The court in *Sims* also found that estopping the district attorney from prosecuting welfare fraud when no fraud has been found in the prior administrative proceeding furthers the traditional public policies underlying the collateral estoppel doctrine because to do so “promote[s] judicial economy by minimizing repetitive litigation” (*Sims, supra*, 32 Cal.3d at p. 488); prevents the district attorney from relitigating the issue of welfare fraud, thereby protecting the recipient from “being harassed by repeated litigation” (*id.* at p. 489); and reduces the possibility of inconsistent judgments: “Indeed, if the criminal prosecution is allowed to proceed and ultimately results in the respondent’s conviction, not only the integrity of the judicial system, but also the integrity of the fair hearing process will be called into question.” (*Id.* at p. 488.) In sum, the court opined, “In the particular and special circumstances of this case, collateral estoppel bars the state from prosecuting respondent for welfare fraud since she was exonerated in a DSS hearing of that charge.” (*Id.* at p. 489.)

Guided, as we must be, by the holding and reasoning of *Sims* (cf. *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455), we find each of the criteria for applying the doctrine of collateral estoppel are present and conclude the

trial court erred in denying defendant's motion to dismiss this action.

First, the issue posed in the administrative proceeding is identical to that litigated in this criminal matter: whether defendant received \$5,839 in welfare benefits to which she was not entitled because she misrepresented that her sons were members of her household or failed to apprise the county when they were not. (Cf. *Lucido, supra*, 51 Cal.3d at p. 342 ["The 'identical issue' requirement addresses whether 'identical factual allegations' are at stake in the two proceedings"].)<sup>2</sup>

Second, the issue was actually litigated in the administrative proceeding. "An issue is actually litigated '[w]hen [it] is *properly raised*, by the pleadings or otherwise, and is submitted for determination, and is *determined* . . . .'" (*Sims, supra*, 32 Cal.3d at p. 484, quoting Rest.2d Judgments

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<sup>2</sup> The Attorney General insists the criminal prosecution and administrative proceeding raised different issues because its complaint alleged wrongdoing over a slightly greater time span than that alleged in the administrative proceeding (the administrative proceeding addressed whether defendant received benefits to which she was not entitled between October 1998 and May 2000, while the criminal complaint alleged she deceived welfare personnel between July 1998 and July 2000). This argument is belied by the fact that the two proceedings sought to collect the identical sum in benefit overpayment, and the trial court's finding that "the boys were not with the mother half-time in September [1998]" shows it focused on the same September 1998 SAWS 7 form -- on which defendant "reported the boys were living with their father 'half of the time now'" -- challenged in the administrative proceeding.

(1982) § 27, com. d, p. 255.) The administrative decision identified the issues subject to determination as (1) whether defendant's two sons were members of her household when she received aid on their behalf, and (2) whether she received relief to which she was not entitled because she "fail[ed] to report the boys' absence from her home." The issues thus raised in the administrative proceeding included whether defendant had correctly, or fraudulently, represented that the boys were members of her household, and whether she continued to receive aid because she neglected to inform the county they were no longer with her for periods long enough to justify assistance.

Third, in so doing, the administrative law judge here "'necessarily decided'" factual issues "'identical to the one[s] which [are] sought to be relitigated'" in the criminal proceeding. (Cf. *Sims, supra*, 32 Cal.3d at p. 485.) That an issue was "'necessarily decided,'" has been interpreted to mean that the issue was not "'entirely unnecessary'" to the judgment in the prior proceeding. (*Lucido, supra*, 51 Cal.3d at p. 342.) Here, whether defendant had defrauded the county was not "'entirely unnecessary'" to the administrative law judge's determination: The recitation of applicable legal principles contained in the administrative decision shows he was aware he could find that defendant either intentionally or inadvertently received aid to which she was not entitled. He made no finding that defendant defrauded the county and instead ruled that the overpayments were caused by administrative error. Had the

administrative law judge found that defendant intentionally misrepresented the composition of her household, or intentionally failed to alert the county when it changed, he would not have found that defendant received benefits to which she was not entitled because the county made administrative errors. His decision therefore reflects a determination of not only *whether* defendant received welfare benefits to which she was not entitled, but also *why*.

Fourth, the administrative law judge's decision is final for the purposes of applying collateral estoppel because the deadline for the welfare department to seek rehearing has now passed and the issue is not on review. (*Sims, supra*, 32 Cal.3d at pp. 485-486.)

Fifth, as in *Sims*, the county and district attorney are in privity. Both entities are county agencies that represented the interests of the state at their respective proceedings. (*Sims, supra*, 32 Cal.3d at p. 487.)

The Attorney General argues the privity requirement is not met so as to justify applying collateral estoppel in this case because "the parties are different" and *Sims's* holding to the contrary rested wholly on a statutory scheme which no longer exists. We disagree. As the *Sims* court explained: "'Privity is essentially a shorthand statement that collateral estoppel is to be applied in a given case; there is no universally applicable definition of privity.'" [Citation.] The concept refers 'to a relationship between the party to be estopped and

the unsuccessful party in the prior litigation which is "sufficiently close" so as to justify application of the doctrine of collateral estoppel.' [Citations.] [¶] Here, the district attorney's office, which represents the party to be estopped, and the County, the unsuccessful party in the prior litigation, are 'sufficiently close' to warrant applying collateral estoppel. Both entities are county agencies that represented the interests of the State of California at the respective proceedings. The district attorney's office represents the State of California in the name of the 'People' at criminal prosecutions. (See Pen. Code, § 684.) At fair hearings, the county welfare department acts as the 'agent' of the state. [Fn. omitted.] '[The] courts have held that the agents of the same government are in privity with each other, since they represent not their own rights but the right of the government. [Fn. omitted.]' [Citations.]" (*Sims, supra*, 32 Cal.3d at pp. 486-487.) The same is true here.

It is correct that the court in *Sims* went on to identify two additional bases for finding a "close association between the County and the district attorney's office": regulations that then permitted both the county and the district attorney to use information gathered by a single investigative unit in their efforts to control welfare fraud, and a statutory scheme then requiring the district attorney to seek restitution before commencing criminal proceedings. (*Sims, supra*, 32 Cal.3d at pp. 487-488.) But the broad legal principles underlying its

finding of privity in *Sims* did not depend on then-existing statutes or regulations. (Cf. *People v. Preston* (1996) 43 Cal.App.4th 450, 455 [*Sims* decision “noted in passing that [Welfare and Institutions Code] section 11483 [then] required the state to seek restitution before initiating criminal proceedings in certain cases”).) Consequently, the amendment of those statutes or regulations does not undermine *Sims*’s reasoning that the county and district attorney are in privity because both are county entities charged with representing the government’s interest in ensuring compliance with the laws governing public benefits.

Finally, and as the state Supreme Court in *Sims* noted, the public policies served by applying collateral estoppel in this context include promoting judicial economy, protecting the recipient from the harassment of repeated litigation, and reducing the possibility of inconsistent judgments. (*Sims, supra*, 32 Cal.3d at pp. 488-489.)

The Attorney General argues public policy objectives would not be served by applying collateral estoppel here. He urges us to follow *Lucido, supra*, 51 Cal.3d 335, in which the court held that public policy weighs against collaterally estopping a criminal prosecution for indecent exposure, despite a prior justice court decision following a probation revocation that the same conduct did not support a violation of probation. In so doing, the court focused in *Lucido* on the vastly different purposes of probation revocation hearings and criminal trials,

holding that the criminal court's function as the forum for determining guilt or innocence would be undermined by collaterally estopping a criminal prosecution based on the outcome of a probation hearing (*id.* at pp. 347-350). It reconciled the outcome in *Sims* by acknowledging the "'unique statutory scheme'" for resolution of welfare fraud strongly supported a holding that collateral estoppel should apply in that context. (*Lucido*, at p. 345, quoting *Sims*, *supra*, 32 Cal.3d at pp. 489-490.)

*Lucido's* focus on the role played by probation revocation hearings does not assist the Attorney General here. Nothing in the reasoning of the *Lucido* opinion, or in its subsequent opinions, persuades us that the California Supreme Court has yet parted company with the reasoning or holding of its opinion in *Sims*. (Cf. *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 71 [citing *Sims* for the proposition that "county's failure to judicially challenge Department of Social Services' finding in administrative hearing bars criminal proceeding"]; see also *Gikas v. Zolin* (1993) 6 Cal.4th 841, 848-852.)

Having concluded that collateral estoppel bars the state from prosecuting defendant for welfare fraud, we need not address defendant's other claims of error.

#### **DISPOSITION**

The judgment is reversed.

BUTZ, J.

We concur:

DAVIS, Acting P. J.

MORRISON, J.

**CERTIFIED FOR PUBLICATION**

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**THIRD APPELLATE DISTRICT**

**(Butte)**

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THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
CATHY DAWN GARCIA,  
  
Defendant and Appellant.

C043590  
  
(Super. Ct. No. CM015310)  
  
ORDER CERTIFYING OPINION  
FOR PUBLICATION  
  
[NO CHANGE IN JUDGMENT]

APPEAL from a judgment of the Superior Court of Butte County, William P. Lamb, J. Reversed.

Sally P. Brajevich, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Senior Assistant Attorney General, Janis Shank McLean, Deputy Attorney General, for Defendant and Respondent.

THE COURT:

The opinion in the above-entitled matter filed on March 5, 2004, was not certified for publication in the Official Reports.

For good cause it now appears that the opinion should be published in full in the Official Reports and it is so ordered. There is no change in judgment. **(CERTIFIED FOR PUBLICATION.)**

FOR THE COURT:

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DAVIS, Acting P. J.

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MORRISON, J.

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BUTZ, J.